

REMARKS/ARGUMENTS

Claims 22-24 have been added without introducing new matter.

Claim rejections 35 U.S.C. §103

Claims 1-3 and 5-21 were rejected, under 35 U.S.C. §103(a), as being allegedly unpatentable over Ottesen et al. (US Pat. No. 6,208,804 b1) (hereinafter Ottesen) in view of Hurtado et al. (US Pat. No. 6,983,371 B1) (hereinafter Hurtado) and further in view of Glasser et al. (US Pat. No. 5,764,890) (hereinafter Glasser). The Applicant respectfully traverses the rejection.

Independent Claim 1 recites a limitation whereby a response is sent for each packet received, as claimed. Independent Claim 1 further recites a limitation whereby the communication layer transfers all of the packets as a single group to a processing layer, as claimed.

Ottesen discloses that an ATM communication network conforms to the OSI model (see Ottesen, col. 18, lines 1-18) and that cooperation between the multimedia server and a set-top control provides for media on demand, servicing a plurality of subscribing customers (see Ottesen, col. 16, lines 57-62). Ottesen further discloses that the set-top controller communicates with a remote multimedia server over a communication channel where the set-top controller coordinates the reception, storage, and decoding of video segments received from the server and communicates control signals to the server to initiate and

regulate the rate that the signal is received (see Ottesen, col. 21, lines 33-55). Additionally, Ottesen discloses that each cell typically includes a header error check for detecting and correcting error in the header (see Ottesen, col. 17, lines 55-56) and that a transfer buffer may be used to enhance synchronization (see Ottesen, col. 22, lines 37-48 and col. 43, lines 34-41). Accordingly, Ottesen discloses a communication between the server and a set-top controller for providing media on demand. However, Ottesen fails to explicitly teach or suggest that a response is sent for each packet received, as claimed.

The rejection asserts that the disclosure by Ottesen necessarily requires the set-top unit to transmit a response (e.g., acknowledgment signal) to the multimedia server upon receiving each packet. The Applicant respectfully disagrees because the disclosure by Ottesen that the server is in communication with a set-top unit falls short of the interpretation by the Examiner that a response is sent for each packet received, as claimed.

The rejection in section 1, "Response to Arguments", asserts that "according to the OSI model one of the functions that the data-link layer provides is to receive acknowledgement at the sender device from the receiving device from each frame (i.e., packet) that is transmitted (corresponding to the recited sending a response for each packet received)." The Applicant respectfully disagrees with this assertion because sending a response for each of the received packet is neither required nor inherent for an OSI model suggested by

the rejection. In fact data link in the OSI model might or might not be reliable and many data link protocols do not have acknowledgements of successful frame reception and acceptance.

The rejection relies on three references in order to support the above assertion. The Applicant respectfully disagrees. For example, Halsall, Fred; "Data Communications, Computer Networks and Open Systems", Fourth Edition. Pages 13-15 and 168-171 (hereinafter Halsall) discloses that for implicit retransmission, S acknowledges only correctly received frames and P interprets the absence of an acknowledgement as an indication that the previous frame was corrupted (see Halsall, page 170). Accordingly, Halsall teaches that an acknowledgment is not sent for corrupted frames. Therefore, Halsall fails to disclose that a response is sent for each packet received, as claimed.

Moreover, the rejection relies on Custer Helen; Inside Windows NT, Microsoft Press. Pages 289-291 (hereinafter Custer) to support the above assertion. The Applicant respectfully disagrees because Custer discloses that a data link layer transmits low-level data frames, waits for an acknowledgement that they were received, and retransmits frames that were lost over unreliable lines (see Custer, page 291). Accordingly, Custer teaches that a number of frames are sent and an acknowledgment indicates the receipt of the frames. Accordingly, Custer fails to explicitly teach that a response is sent for each packet received, as claimed.

Accordingly, Halsall and Custer fail to support the assertion in the rejection that a response for each of the received packets is inherent and necessarily required by the OSI model. As such, the mere fact that Ottesen uses the OSI model does not necessarily translate to sending a response for each packet received, as claimed.

"To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' " In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

The rejection relies on Ottesen's OSI model to show the limitation whereby the communication layer transfers all of the packets as a single group to a processing layer, as claimed. The rejection further relies on the references discussing the OSI model to show the recited limitations. The Applicant respectfully disagrees.

One of the references cited by the Examiner is Microsoft Windows NT server, Networking Guide, "Technical Information and Tools for the Support

Professional”, Microsoft Press, Pages 14-20 (hereinafter Microsoft). Microsoft discloses that the “transport layer can accept large messages, but there are strict size limits imposed by the layers at the network level and lower. Consequently, the transport layer must break up the messages into smaller units, called frames, and attach a header to each frame” (see Microsoft, page 17, last paragraph). Accordingly, Microsoft explicitly teaches strict size limitations on the data link layer, thereby requiring a message to be broken up into smaller units for transmission to a higher level (e.g., transport and application layer). As such, if the data link layer is incapable of receiving large messages due to the strict size limitations, it is similarly incapable of sending large messages due to strict size limitation. Accordingly, the OSI model disclosed by Ottesen and Microsoft fails to disclose and in fact teach away from the recited limitation that the communication layer transfers all of the packets as a single group to a processing layer, as claimed.

The Applicant does not understand Hurtado and Glasser to remedy the failures of Ottesen as discussed above. Accordingly, the combination of Ottesen alone or in combination with Hurtado and Glasser fails to teach or suggest the recited limitations of independent Claim 1. Independent Claims 9 and 13 recite limitations similar to that of independent Claim 1 and are patentable for similar reasons. Dependent claims are patentable by virtue of their dependency.

Moreover, regarding Claim 2, the rejection relies on Ottesen disclosing that a subscriber may view portions of the multimedia by activating a control button (see Ottesen, col. 22, lines 2-6) wherein only the compressed video segments corresponding to portions of the multimedia program are stored in the DASD (see Ottesen, col. 22, lines 6-15). The Applicant does not understand the disclosure by Ottesen to teach or suggest the first and the second device determining whether the packet is a fragmented packet, as claimed.

Moreover, regarding Claims 8 and 21, the rejection relies on Ottesen disclosing that before transmitting a video program the subscriber's account status is verified and after the verification the subscriber is granted authorization to received the program preferably on a pay-per-view basis (see Ottesen, col. 13, lines 10-20). The Applicant does not understand verifying and authorizing a user to teach or suggest compliance with a copy protection scheme, as claimed.

As such, allowance of Claims 1-3 and 5-24 is earnestly solicited.

For the above reasons, the Applicant requests reconsideration and withdrawal of rejection under 35 U.S.C. §103(a).


CONCLUSION

In light of the above listed remarks, reconsideration of the rejected Claims 1-3 and 5-24 is requested. Based on the arguments presented above, it is respectfully submitted that Claims 1-3 and 5-24 overcome the rejection of record and, therefore, allowance of Claims 1-3 and 5-24 is earnestly solicited.

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